

SERVICE DATE – NOVEMBER 14, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21067

PRISONER TRANSPORTATION SERVICES, LLC—CONTROL—U.S. CORRECTIONS,
LLC D/B/A/ USC

Digest:¹ This decision grants the request of Prisoner Transportation Services, LLC, to acquire common control of U.S. Corrections, LLC, and addresses comments filed in this proceeding.

Decided: November 10, 2016

On May 26, 2016, Prisoner Transportation Services, LLC (Applicant) filed an application for approval under 49 U.S.C. § 14303 to acquire common control of U.S. Corrections, LLC d/b/a/ USC (USC). In a notice served and published in the Federal Register on June 24, 2016 (81 Fed. Reg. 41,368), the Board tentatively approved the application, subject to the consideration of any timely filed opposing comments. Prisoner Transp. Serv., LLC—Control—U.S. Corrections, LLC (June Decision), MCF 21067 (STB served June 24, 2016).

In its application, Applicant states that it performs a specialized type of interstate transportation of passengers by motor carrier, transporting incarcerated prisoners for state and local prisons, correctional facilities, and sheriff's departments, and that USC is engaged in the same specialized for-hire interstate passenger carriage business. Applicant states that, under the proposed transaction, the owners of USC would transfer their complete interest in USC to Applicant, and USC would join Applicant as one of its affiliate carriers. The current owners of USC would retain indirect control of USC and acquire indirect control of the affiliate carriers already under Applicant. Applicant would acquire indirect control of USC and retain indirect control of its affiliated entities.

The Board received two comments in response to Applicant's filing. On August 8, 2016, the Human Rights Defense Center (HRDC) submitted a comment in opposition to Applicant's acquisition of common control of USC. HRDC states that it advocates for the rights of persons held in U.S. detention facilities, including those who are transported by Applicant and USC. HRDC argues that the merger is not consistent with the public interest, because "many problems that [Applicant] has experienced in the past, including escapes, prisoner deaths, accidents and other issues, certainly have a significant impact on the adequacy of transportation

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

services to the public – most obviously with respect to escapes from and accidents involving prisoner transportation vehicles, which directly endanger the public.” (HRDC Comment 2.) HRDC’s filing includes descriptions of specific instances of prisoner abuse, sexual assault, and medical neglect that it alleges occurred during transportation by Applicant or USC. HRDC argues that the public has an interest in ensuring that prisoners are transported humanely and safely and that escapes and accidents endangering the public are minimized. HRDC alleges that the proposed transaction would lead to more vehicles transporting more prisoners, which would provide more opportunities for accidents, escapes, and abuses.

On August 9, 2016, Steven Kalishman, counsel for Fred Bernard Ellis, Jr., filed a comment noting that a default judgment was entered against another extradition company, USG7, LLC (USG7), for injuries Mr. Ellis sustained during transportation while in the custody of USG7 agents. Mr. Kalishman states that the principals of that company, Steven and Ashley Jacques, will become part-owners of Applicant should the merger proceed. Mr. Kalishman argues that Steven and Ashley Jacques should be held accountable for the judgments against USG7 before the Board allows this merger to take place.

On August 23, 2016, Applicant and USC filed a reply to the comments, arguing that the proposed transaction meets the criteria for approval under 49 U.S.C. § 14303. Applicant points out that the commenters did not oppose the application on the merits and did not challenge the Board’s finding with respect to the statutory requirements. Specifically, Applicant argues that neither commenter raises any antitrust concerns or argues that the competitive marketplace for the transportation of prisoners would be adversely affected. Applicant responds that the issues raised by HRDC are subject to the jurisdiction of the Federal Motor Carrier Safety Administration (FMCSA) and the U.S. Department of Justice, which enforces the Interstate Transportation of Dangerous Criminals Act. With respect to Mr. Kalishman’s comment, Applicant replies that FMCSA files show that USG7 was fully insured during its operational history and that Mr. Kalishman and his client have recourse “pursuant to 49 C.F.R. § 387 and the Form BMC-91X endorsement to USG7’s insurer.” (Applicant Reply 6.)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of the affected carrier employees. Pursuant to 49 C.F.R. § 1182.6(a), the June Decision, which tentatively approved the transaction, was automatically vacated upon the filing of the opposing comments. Under 49 C.F.R. § 1182.6(c)(1), the Board finds that it is able to make a determination on the current record and that no additional evidence is required. Applying the statutory standard in 49 U.S.C. § 14303(b), Applicant’s proposed transaction will be approved and authorized.

The concerns raised by HRDC, although serious, do not demonstrate that the Board should alter its prior finding that the transaction is consistent with the public interest. While the Board appreciates the gravity of HRDC's allegations, the Board's public interest inquiry is confined to the economic effects of the proposed transaction.² As previously noted by the Interstate Commerce Commission (ICC), the Board's predecessor agency, the United States Supreme Court has found that "the use of the words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare. Rather, the words take meaning from the purposes of the regulatory legislation." NAACP v. Fed. Power Comm'n, 425 U.S. 662, 669 (1976); Transp. of Gov't Traffic, 129 M.C.C. 623, 633 (1978). In applying this concept to the "public convenience and necessity" standard administered by the ICC in motor carrier licensing cases, the United States Court of Appeals for the Sixth Circuit also noted that "[t]he public interest which Congress intended the Interstate Commerce Commission to promote and protect is one related to transportation." O-J Transport Co. v. United States, 536 F.2d 126, 132-33 (6th Cir. 1976). Even within the realm of "transportation," the Board's jurisdiction is focused on economic regulation. In Academy Express, L.L.C.—Acquisition of the Properties of Go Bus LLC & Its Affiliate, MCIZ Corp., MCF 21059, slip op. at 3 (STB served Feb. 17, 2015), a commenter opposed an acquisition transaction on the grounds of safety concerns, but the Board held that it would not substitute its judgment regarding the safety fitness of the carriers for that of the FMCSA, the agency tasked with overseeing the safety of commercial motor vehicles.³ The Board's June 24, 2016 decision in this case tentatively approving the transaction was served on FMCSA, which has not opposed or otherwise commented on the application. For these reasons, HRDC's comment does not alter the Board's earlier finding that the proposed transaction is consistent with the public interest.

Mr. Kalishman raises concerns similar to those expressed in a previous docket involving the acquisition of PTS of America, LLC (PTS), by the Applicant here, Prisoner Transportation Services, LLC. In that case, three law firms filed a joint comment on behalf of their respective clients alleging that PTS might attempt to shift its assets to a newly created entity so as to prevent those assets from being subject to collection in pending civil actions. See Prisoner Transp. Serv., LLC—Control—PTS of America, LLC, MCF 21064 (STB served Nov. 27, 2015). The Board held that its "licensing authority under 49 U.S.C. § 14303(b) is permissive and reflects consideration of the transportation merits only." Id. at 3. A Board license does not legitimize the underlying corporate transaction that the parties entered into under state law. If there is a dispute about the underlying validity of a transaction such as the acquisition of control

² In addition to addressing the issues with the Board, HRDC describes and attaches a letter from Senator Cory Booker to Attorney General Loretta Lynch asking her to investigate the nature and extent of prisoner abuse and neglect with the private prisoner transport industry.

³ The Board's regulation at 49 C.F.R. § 1182.2(a)(8) requires that applications for authority under 49 U.S.C. § 14303 to acquire control of motor carriers of passengers certify the current U.S. Department of Transportation safety fitness rating of each motor passenger carrier involved in the transaction. Applicant has satisfied this requirement. (Application 18-19.)

at issue here, that dispute generally should be decided by a court, applying state law. See V&S Ry.—Pet. for Declaratory Order—R.R. Operations in Hutchinson, Kan., FD 35459, slip op. at 6-7 (STB served July 12, 2012). In this case, the Board's approval of Applicant's acquisition of USC does not excuse any judgments entered against USC, USG7, or its principals. Mr. Kalishman's comment does not alter the Board's finding that the proposed transaction is consistent with the public interest.

For these reasons, the Board finds under 49 U.S.C. § 14303(b) that the transaction is consistent with the public interest and approves and authorizes the transaction.

It is ordered:

1. The proposed transaction is approved.
2. This decision is effective on its service date.

3. A copy of this decision will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman. Vice Chairman Miller commented with a separate expression.

VICE CHAIRMAN MILLER, commenting:

The problems of prisoner abuse, sexual assault, and medical neglect by Prisoner Transportation Services, LLC cited by the Human Rights Defense Center are very concerning and raise questions of whether Prisoners Transportation Service has committed human rights violations. As disturbing as these incidents are, the public interest issues to be determined by the Board are limited to economics and transportation. Based on that standard, in my view, there is no basis to deny the application. However, the issues raised should be explored and so I hope that the U.S. Department of Justice will act upon the request from U.S. Senator Cory A. Booker¹ to open an investigation.

¹ See HRDC Comment, Exhibit 1 (Letter from U.S. Senator Booker to The Honorable Loretta Lynch, Attorney General).